IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - LAW DIVISION
TAX AND MISCELLANEOUS REMEDIES SECTION

Naomi Treece,	)	
Petitioner/Appellant,	)	
v.	)	No. 87 L 51221
	)	
Industrial Commission of Illinois and	)	
Lyons Township High School	)	
	)	
Respondent/Appellees	)	

DECISION AND JUDGMENT ORDER

This matter is before the Court for a Judicial Review of a Decision of the Illinois Industrial Commission (the Commission) awarding Petitioner temporary total disability (TTD) for a period of 70 weeks, but denying further benefits and additional compensation, all pursuant to sections 19(b), 19(k), 19(l) and 16 of the Worker's Compensation Act (the Act).

ISSUES PRESENTED FOR REVIEW

Whether the finding of the Commission, affirming the finding of the Arbitrator, that Petitioner failed to prove a causal relationship between her accidental injuries of November 17, 1980 and her condition of ill-being, subsequent to November 12, 1982, is contrary to the law and against the manifest weight of the evidence.

FINDINGS, CONCLUSIONS AND DECISION OF THE ARBITRATOR
See Attachment A.

FINDINGS, CONCLUSIONS AND DECISION OF THE COMMISSION
See Attachment B.

ARGUMENTS OF THE PARTIES AND COMMENTS AND DECISION OF THE COURT
Petitioner contends that the finding of the Commission, adopting the finding of the Arbitrator, that Petitioner failed to prove a causal relationship between her accidental injuries of November 17, 1980

and her condition of ill-being, subsequent to November 12, 1982, is contrary to the law.

Petitioner argues that on February 24, 1981, an Arbitrator implicitly found, in a Section 19(b) decision, that an accident occurred on November 17, 1980 and expressly found that the injuries sustained caused the disabling condition of Petitioner; that on October 24, 1981, Dr. Garron, a clinical psychologist, examined Petitioner and testified that Petitioner was suffering from an emotional disturbance; that on December 30, 1981, the same Arbitrator expressly found, in a Section 19(b) decision, that the disabling condition of Petitioner was the result of an accident sustained on November 17, 1980; that neither of these decisions were reviewed by the Commission and are final determinations; that the issue of causal relation, between Petitioner's organic and functional or emotional condition of ill-being and the accident of November 17, 1980, was determined by an Arbitrator on two different occasions; that the issue of a causal relation between Petitioner's organic and functions or emotional condition of ill-being and the accident of November 17, 1980, has been determined in favor of Petitioner by two final decisions of the Commission; that, in respect to the issue of causal relation, the Arbitrator and Commission are bound by the prior determinations under the Doctrine of Res Judicata and the failure of the Arbitrator and Commission to find that a causal relationship exists between Petitioner's functional or emotional condition of ill-being and the accident of November 17, 1980, is contrary to the law.

Respondent argues that the issue presented at each of the Section 19(b) hearings was whether Petitioner's condition of ill-being, on the date of each Section 19(b) hearing, was causally related to the accident of November 17, 1980 (emphasis added); that each time a new period of disability is claimed and evidence is introduced, Petitioner must establish that the same condition of ill-being exists and the Commission must render a new determination of causal relation; that at the prior hearings the condition of ill-being established was that of a post-concussion syndrome with some depression, moderately severe decompensation and a mixed bipolar affective disorder; that when the issue of permanency was heard at the Arbitration hearings on February 25, 1985 and May 29, 1985, the condition of ill-being established was that of a major depressive

disorder; that the underlying issue before the Arbitrator in respect to causal relation was different than the underlying issue before the Arbitrator in the prior hearings; that the Arbitrator, at the subsequent hearing, was not bound by the prior determination and properly did not apply the Doctrine of Res Judicata and that implicit in the decision of the Arbitrator and the Commission, is a determination that a different condition existed.

Petitioner replies that the second 19(b) Arbitration decision was reviewed by Respondent who subsequently dismissed its review; that the condition of ill-being, which was before the Arbitrator and Commission at the proceedings which are the subject matter of this Judicial Review, existed at the time of the second Arbitration decision; that the second Arbitration decision stated:

> ....The Arbitrator adopts the findings of Dr. Mullan as set out in Px7. The Arbitrator further finds Petitioner's complaints to be credible and consistent with Dr. Mullan's findings.

that said decision also stated:

> The services provided by Mary T. Weed, M.A., at the request of Dr. Mullan was reasonably related to the diagnosis and treatment of Petitioner's condition resulting from the above accident;

that Dr. Mullan had found Petitioner had a post-concussion syndrome with organic and functional components and that Petitioner had been depressed and Elavil was prescribed for her depression and anxiety as early as January 7, 1981; that Dr. Mullan referred Petitioner to Mary Weed, M.A. for psychological testing to determine how much of her complaints were functional (psychological) as opposed to organic; that Mary Weed's diagnosis was that Petitioner had a severe neurosis with anxiety and depressive reaction and signs of possible organic brain damage and that Ms. Weed further stated Petitioner's prognosis for recovery was poor; that the subsequent proceedings resulted in the same diagnosis by Dr. Mullan as had previously been adopted by the arbitrator in his second Arbitration decision herein; that Dr. Mullan said in his opinion Petitioner's

....inability (sic) work dates from her injury. And there's been no other cause that we know of that would have caused her to stop working except the injury.

The problem is how much of this pain that she now (sic) is what we call organic, and how much is functional. But irrespective, both date from the injury;

that Dr. Mullan added:

There's no question about it that she had a post-concussive syndrome. That's what her whole problem's about.

But it's not a package deal like a burst appendix or a gallbladder stone.

It's the whole thing that happens after injuries so it can encompass very little, or it can encompass a great deal.

Q. What findings are typical of a post-concussive syndrome?

A. Again because it covers everything, everything can be included in this. So it's not a specific entity at all.

But commonly, the things that are included are headaches, poor memory, inability to concentrate, to function, tiredness.

that Dr. Mullan added that he disagreed with the opinion of Dr. Glista with respect to the length of time depression can last following an accident and stated:

People can become depressed and carry out for a lifetime. The depression is sort of a, kind of a grudge. Why did this happen to me? Why did I lose my child? Why did I lose my job? Why did I lose my health?

And people can carry this as a perpetual grudge. And if you carry this as a perpetual grudge, you can be depressed over it...This all dates from that time.

It's my opinion that this is related to an (sic) incident;

that the diagnosis of Dr. Sackett, Respondent's examining psychiatrist and Dr. Ziporyn, Petitioner's psychiatrist, was the same as Dr. Mullan's; that Dr. Garron had found Petitioner to be in an acutely troubled state and diagnosed a mixed bipolar affective disorder and in need of psychiatric treatment when he first saw her on October 24, 1981 at Respondent's request; that he similarly found her to be acutely disturbed, disabled and in need of psychiatric treatment when he next saw her on December 23, 1983; that finally, on August 4, 1984, when he last saw her, he stated his diagnosis was the same as before but it shifted to the depressive side of the bipolar continuum and he diagnosed a major depressive episode and again recommended psychiatric treatment and that there has been a continuing functional component to Petitioner's condition and it was the same, progressing condition of ill-being as that which existed at the time of the second Arbitration decision.

The Court agrees with Respondent. A review of the record reveals that the Arbitrator made an implicit finding that the condition of ill-being was different than the condition of ill-being at the prior hearings. The Court determines that the implicit finding is not against the manifest weight of the evidence.e Some evidence of an emotional condition of ill-being was before the Arbitrator at the prior hearings, however, there was no express finding of a causal relation between Petitioner's accidental injuries of November 17, 1980 and her emotional condition (emphasis added). Furthermore, a claimant must establish that the condition at the subsequent proceeding is the same condition that existed at the prior proceeding in order for the Doctrine of Res Judicate to apply. The emotional condition at the prior proceeding was that Petitioner had some depression and a mixed bipolar affective disorder. The emotional condition at the subsequent proceeding was that of a major depressive disorder. The issues must be the same. The emotional conditions were different. The Doctrine of Res Judicata does not apply. The express finding of the Arbitrator adopted by the Commission, that Petitioner failed to prove a causal relationship between her accidental injuries of November 17, 1980 to November 12, 1982, is not contrary to the law.

Petitioner's next contention is that the finding of the Commission, adopting the finding of the Arbitrator, that Petitioner failed to prove a causal relationship between her accidental injuries of November 17, 1980 and her condition of ill-being, subsequent to November 12, 1982, is against the manifest weight of the evidence. Petitioner argues that the finding of the Commission, adopting the finding of the Arbitrator, that there is no credible psychological testimony to support a finding that the alleged trauma aggravated or exacerbated her psychological condition, is against the manifest weight of the evidence; that Arbitrator Green heard the testimony of Petitioner on two occasions and awarded her TTd benefits; that in the December 21, 1981 decision of Arbitrator Green is a finding that the testimony of Petitioner was credible; that Arbitrator Galicia reviewed the testimony and reports of Mary Weed, a registered psychologist, from the previous hearings and noted that she stated Petitioner was intentionally doing poorly on the tests and that there was a strong possibility of malingering for secondary gain; that Arbitrator Galicia reviewed the "unwitnessed accident" of November 17, 1980 and noted there was no laceration or bleeding; that Arbitrator Galacia noted that Dr. Young denied that there was any evidence of vomiting, which contradicted Petitioner's complaints of "daily vomiting"; that Arbitrator Galicia noted that Dr. Neely, upon the admission of Petitioner to the University of Chicago Hospital on October 6, 1983, stated that "she sometimes eats like a maniac and occasionally makes herself throw up"; that Arbitrator Galicia noted that Arbitrator Green recalled Petitioner had no problem expressing herself whereas Mary Weed's test results were diametrically opposed to Arbitrator Green's observations; that Dr. Miller found a causal relation based on both organic and functional components and that Dr. Ziporyn and Dr. Sackett found a causal relationship between Petitioner's depression and the accident.

Respondent argues that Arbitrator Galicia noted that Dr. Marvin Ziporyn, a psychiatrist, clearly lacked credibility in that he had no contact with Petitioner and was not given the number of EEG's in the hypothetical question posed to him, and further assumed there was severe initial damage to the cranial contents, as the basis for his opinion that there was a causal relationship between Petitioner's depression and the accident, when, in fact, there was no evidence in the record of damage to the cranial contents; that Dr. Miller

admitted he was not qualified to render a psychological opinion; that Arbitrator Galicia noted that Dr. Glista, a board certified neurologist, stated that the injuries were not related to her present condition of ill-being and that it was not plausible that the accident aggravated Petitioner's depression for a period of four years; that his testimony was found to be highly credible and that Dr. Garron, a clinical psychologist, made no finding in respect to a causal relation between the accident and Petitioner's current emotional condition.

Petitioner replies that Dr. Glista, a neurologist, was less qualified to give an opinion in respect to an emotional disturbance than Dr. Ziporyn, a psychiatrist; that Arbitrator Galicia's attack upon Petitioner's credibility is not only contrary to the specific findings by Arbitrator Green in his second Arbitration decision when he stated:

> The Arbitrator further finds Petitioner's complaints to be credible and consistent with Dr. Mullan's findings

but it was also made despite evidence that Petitioner had been continuously psychologically upset at all times subsequent to her November, 1980 work related injury; that the reasons which Arbitrator Galicia cited in finding that Petitioner lacked credibility related to incidents that occurred prior in time to the second Arbitration decision and that what Arbitrator Galicia did with regard to the issue of the credibility of Petitioner and Mary Weed, as well as almost all of the other evidence, was to retry the case thereby ignoring the two prior decisions.

The Court determines that Arbitrator Galicia erred in reviewing the prior record compiled before Arbitrator Green and then expressly finding that there was a lack of credibility on the part of Petitioner and Mary Weed. It was improper for him to again determine issues of credibility that were previously heard and determined by Arbitrator Green. The Court determines that by not accepting the prior determinations of credibility, the finding of the Arbitrator, which was affirmed by the Commission, in respect to causal relation, was prejudicial. The Court determines the matter should be remanded to the Commission for a re-evaluation of the record

in respect to the issue of causal relation accepting the prior determinations of credibility by Arbitrator Green.

The decision of the Commission is set aside and the matter remanded to the Commission in accordance with the above opinion.

The Clerk of the Court is ordered to surrender the file to Petitioner's attorney for transfer to the Commission.

Dated: May 5, 1989

Enter: Judge Alexander P. White